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Supreme Court, U.S.
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No. _____

IN THE
**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1991

MILDRED LOUISE BLAS,
et. al.,

Petitioners

versus

Government of Guam,
et. al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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A P P E N D I X

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APPENDIX A

**FOR PUBLICATION**

# UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MILDRED LOUISE BLAS, as Personal Representative of the Estate of John Marvin Blas, on her own behalf, and as Guardian for the Minor, Marvin John Borja,
*Plaintiff-Appellant,*

v.

GOVERNMENT OF GUAM; JOSE T. CHARFAUROS, Individually and as Director of the Department of Corrections; FREDRICK B. QUINENE, Individually and as Deputy Director of the Department of Corrections; VICENTE CASTRO, Individually and as Superintendent of the Department of Corrections, Government of Guam,
*Defendants-Appellees.*

No. 90-16048
D.C. No.
CV-89-00052-DHM
OPINION

Appeal from the United States District Court
for the District of Guam, Appellate Division
Munson, Hatter and Duenas, Judges, Presiding

Argued and Submitted
May 7, 1991—Honolulu, Hawaii

Filed July 31, 1991

Before: Mary M. Schroeder, Betty B. Fletcher and
Warren J. Ferguson, Circuit Judges.

Opinion by Judge Schroeder

## SUMMARY

### Appeals

Dismissing an appeal from a decision of the Appellate Division of the District Court of Guam as untimely, the court of appeals held that Guam was not an agency of the federal government for purposes of the 60-day time limit on appeals in suits involving such agencies under Rule 4(a).

Appellant Mildred Louise Blas brought a wrongful death action against the government of Guam for the death of her son in a Guam prison. The Superior Court of Guam determined that her complaint was barred by the statute of limitations. The Appellate Division of the District of Guam affirmed. Blas' appeal to the Ninth Circuit was not filed within the 30-day period provided in Fed. R. App. P. 4(a)(1). Blas argued that she was entitled to the 60-day period provied in that Rule for cases in which the United States or one of its agencies is a party.

[1] While the Ninth Circuit has not previously decided whether Guam is a federal agency for purposes of Rule 4(a)(1), it has recognized that Guam should be viewed as a federal instrumentality for some purposes. Nevertheless, the court has also recognized that the designation of an organization as a federal instrumentality is not dispositive as to whether the organization is a federal agency for purposes of that Rule. [2] Consideration of the factors in *Diaz v. Trust Territory of the Pacific Islands* that led the court to conclude that the government of the Trust Territory of the Mariana Islands was a federal agency for purposes of the same Rule compelled the opposite conclusion in this case. Although the government of Guam, like that of the Trust Territory, performs the governmental function of administration of an unincorporated territory, its executive, unlike that of the Trust Territory, is elected by its own citizens. Guam collects an

income tax to finance itself, and is included in the definition of "state" in several federal statutes. Thus, it is not treated as an arm of the federal government. Therefore, the appeal was dimissed as untimely.

## COUNSEL

Gary W.F. Gumataotao, Law Office of Del Priore & Gumataotao, Agana, Guam, for the plaintiff-appellant.

Kenneth R. Orcutt, Assistant Attorney General, Agana, Guam, for the defendants-appellees.

## OPINION

SCHROEDER, Circuit Judge:

Mildred Louise Blas appeals from a decision of the Appellate Division of the District Court of Guam affirming the Guam Superior Court's determination that her complaint was barred by the statute of limitations. The underlying suit was a wrongful death action against the government of Guam and various individual corrections officers, based upon the death of her son in a Guam prison. *See* Guam Government Code §§ 65.00 -.07. The dispositive issue here is whether the appeal is untimely because it was not filed within the 30-day period provided in Fed. R. App. P. 4(a)(1). Blas maintains that she is entitled to the 60-day period provided in that Rule for cases in which the United States or one of its agencies is a party. The issue before us is whether the government of Guam is an agency of the United States within the meaning of that Rule.[1]

[1]The Rule provides:

(1) In a civil case in which an appeal is permitted by law as of right from a district court to a court of appeals the notice of

[1] This court has not previously decided whether Guam is a federal agency for purposes of Rule 4(a)(1). We have recognized that Guam should be viewed as a federal instrumentality for some purposes. *See Ngiraingas v. Sanchez*, 858 F.2d 1368, 1370 (9th Cir. 1988), *aff'd*, 110 S. Ct. 1737 (1990); *Sakamoto v. Duty Free Shoppers, Ltd.*, 764 F.2d 1285, 1286 (9th Cir. 1985), *cert. denied*, 475 U.S. 1081 (1986). Nevertheless, the court has also recognized that the designation of an organization as a federal instrumentality is not dispositive as to whether the organization is a federal agency for purposes of Rule 4(a)(1). *Hoag Ranches v. Stockton Prod. Credit Ass'n (In re Hoag Ranches)*, 846 F.2d 1225, 1227-28 (9th Cir. 1988).

The relevant analysis is provided by our decision in *Diaz v. Trust Territory of the Pacific Islands*, 876 F.2d 1401, 1404-05 (9th Cir. 1989). There, we considered whether the government of the Trust Territory of the Mariana Islands was a federal agency for purposes of the same provision. In *Diaz*, we considered six factors to be relevant: (1) the extent to which the entity at issue performed a governmental function; (2) the scope of the federal government's involvement in the management of that entity; (3) whether the entity's operations were financed by the federal government; (4) proprietary interests of persons other than the federal government; (5) whether the entity is treated as an arm of the federal government in federal statutes; and (6) whether the entity is treated as an arm of the federal government under the Federal Tort Claims Act. *Id.* We concluded that the Trust Territory was an

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appeal required by Rule 3 shall be filed with the clerk of the district court within 30 days after the date of entry of the judgment or order appealed from; but if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within 60 days after such entry. If a notice of appeal is mistakenly filed in the court of appeals, the clerk of the court of appeals shall note thereon the date on which it was received and transmit it to the clerk of the district court and it shall be deemed filed in the district court on the date so noted.

agency of the United States because it performed a governmental function, its executive officer was appointed by the President with the advice and consent of the Senate, its operations were largely funded by the United States Treasury, and its litigation decision making processes included the United States government. *Id.* at 1405.

[2] Consideration of these factors in this case compels the opposite conclusion. Although the government of Guam, like that of the Trust Territory, performs the governmental function of administration of an unincorporated territory, its executive, unlike that of the Trust Territory, is elected by its own citizens. *See* 48 U.S.C. §§ 1422, 1422a. Guam collects a territorial income tax to finance itself. *See* 48 U.S.C. §§ 1421h, 1421i. It is included under the definition of "state" in several federal statutes, and is thus not treated like an arm of the federal government in that respect. *See, e.g.*, 42 U.S.C. §§ 1301, 8802. Finally, Guam asserts, and Blas does not dispute, that there is no federal involvement in its litigation decision making processes. Thus, each factor that supported our decision to treat the Trust Territory as a federal agency weighs against according such treatment to Guam.

For these reasons, we conclude that Guam is not an agency of the federal government for purposes of the 60-day time limit on appeals in suits involving such agencies under Rule 4(a). The appeal in this case was therefore untimely and must be DISMISSED.

IT IS SO ORDERED.

**APPENDIX B**

NOT FOR PUBLICATION

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

| | | |
|---|---|---|
| MILDRED LOUISE BLAS, as Personal Representative of the Estate of John Marvin Blas, on her own behalf, and as Guardian for the Minor, Marvin John Borja, | ) | No. 90-16048 |
| | ) | D.C. #CV-89-00052-DHM |
| | ) | (District of Guam) |
| Plaintiff-Appellant, | ) | |
| v. | ) | **ORDER** |
| GOVERNMENT OF GUAM, JOSE T. CHARFAUROS, Individually and as Director of the Department of Corrections) FREDERICK B. QUINENE, | ) | |

Individually and as )
Deputy Director of the )
Department of Corrections)
VICENTE CASTRO, )
Individually and as )
Superintendent of the )
Department of Corrections)
Government of Guam, )
)
Defendants-Appellees)
_____)

Before: **SCHROEDER, FLETCHER and FERGUSON, Circuit Judges**

The panel as constituted above has voted to deny the petition for rehearing. (Stamped FILED on September 18, 1991 by Cathy A. Caterson, Clerk of U.S. Court of Appeals)

## APPENDIX C

### GENERAL PROVISIONS

**48 U.S.C.S. §1421. Territory included under name Guam**

The territory ceded to the United States in accordance with the provisions of the Treaty of Peace between the United States and Spain, signed at Paris, December 10, 1898, and proclaimed April 11, 1899, and known as the island of Guam in the Mariana Islands, shall continue to be known as Guam.

(Aug. 1, 1950, ch 512, § 2, 64 Stat. 384.)

## APPENDIX D

**48 U.S.C.S. § 1421i. Income tax**

**(a) Applicability of Federal laws; separate tax.** The income-tax laws in force in the Untied States of America and those which may hereafter be enacted shall be held to be likewise in force in Guam: Provided, That notwithstanding any other provision of law, the Legislature of Guam may levy a separate tax on all taxpayers in an amount not to exceed 10 per centum of their annual income tax obligation to the Government of Guam.

**(b) Guam Territorial income tax.** The income-tax laws in force in Guam pursuant to subsection (a) of this section shall be deemed to impose a separate Territorial income tax, payable to the government of Guam, which tax is designated the "Guam Territorial income tax".

**(c) Enforcement of tax.** The administration and enforcement of the Guam Territorial income tax shall be performed by or under the supervision of the Governor. Any function needful to the administration and enforcement of the income-tax laws in force in Guam pursuant to subsection (a) of this section shall be performed by any officer or employee of the government of Guam duly authorized by the Governor (either directly, or indirectly by one or more redelegations of authority) to perform such function.

**(d) Definition of "income-tax laws"; administration and enforcement; rules and regulations.** (1) The income-tax laws in force in Guam pursuant to subsection (a) of this section include but are not limited to the following provisions of the Internal Revenue Code of 1954, where not manifestly inapplicable or incompatible with the intent of this section: Subtitle

A [26 USCS §§ 1 et seq.] (not including chapter 2 and section 931 [26 USCS §§ 1401 et seq., 931 [26 USCS §§ 1401 et seq., 931]); chapters 24 and 25 of subtitle C [26 USCS §§ 3401 et seq., 3501 et seq.], with reference to the collection of income tax at source on wages; and all provisions of subtitle F [26 USCS §§ 6001 et seq.] which apply to the income tax, including provisions as to crimes, other offenses, and forfeitures contained in chapter 75 [26 USCS §§ 7201 et seq.]. For the period after 1950 and prior to the effective date of the repeal of any provision of the Internal Revenue Code of 1939 which corresponds to one or more of those provisions of the Internal Revenue Code of 1954 [26 USCS §§ 1 et seq.] which are included in the income-tax laws in force in Guam pursuant to subsection (a) of this section, such income-tax laws include but

are not limited to such provisions of the Internal Revenue Code of 1939.

(2) The Governor of his delegate shall have the same administrative and enforcement powers and remedies with regard to the Guam Territorial income tax as the Secretary of the Treasury, and other United States income tax. Needful rules and regulations not inconsistent with the regulations prescribed under section 7654(e) of the Internal Revenue Code of 1954 [26 USCS §7654(e)] for enforcement of the Guam Territorial income tax shall be prescribed by the Governor. The Governor or his delegate shall have authority to issue, from time to time, in whole or in part, the test of the income-tax laws in force in Guam pursuant to subsection (a) of this section.

**(e) Substitution of terms.** In applying as the Guam Territorial income tax the income-tax laws in force in Guam pursuant

to subsection (a) of this section, except where it is manifestly otherwise required, the applicable provisions of the Internal Revenue Codes of 1954 and 1939, shall be read so as to substitute "Guam" for "United States", "Governor or his delegate" for "Secretary of his delegate", "Governor or his delegate" for "Commissioner of Internal Revenue" and "Collector or Internal Revenue", nomenclature and other language, including the omission of inapplicable language, where necessary to effect the intent of this section.

**(f) Criminal offenses; prosecution.** Any act or failure to act with respect to the Guam Territorial income tax which constitutes a criminal offense under chapter 75 of subtitle F of the Internal Revenue Code of 1954 [26 USCS §§ 7201 et seq.], or the corresponding provisions of the Internal Revenue Code of 1939, as

included in the income-tax laws in force in Guam pursuant to subsection (a) of this section, shall be an offense against the government of Guam and may be prosecuted in the name of the government of Guam by the appropriate officers thereof.

**(g) Liens.** The government of Guam shall have a lien with respect to the Guam Territorial income tax in the same manner and with the same effect, and subject to the same conditions, as the United States has a lien with respect to the United States income tax. Such lien in respect of the Guam Territorial income tax shall be enforceable in the name of and by the government of Guam. Where filing of a notice of lien is prescribed by the income-tax laws in force in Guam pursuant to subsection (a) of this section, such notice shall be filed in the Office of the Clerk of the District Court of Guam.

**(h) Jurisdiction of District Court; suits for recovery or collection of taxes; payment of judgment.** (1) Notwithstanding any provision of section 22 of this Act [48 USCS §1424] or any other provision of law to the contrary, the District Court of Guam shall have exclusive original jurisdiction over all judicial proceedings in Guam, both criminal and civil, regardless of the degree of the offense or of the amount involved, with respect to the Guam Territorial income tax.

(2) Suits for the recovery of any Guam Territorial income tax alleged to have been erroneously or illegally assessed or collected, or of nay penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, under the income-tax laws in force in Guam, pursuant to subsection (a) of this section, may, regardless of the amount of

claim, be maintained against the government of Guam subject to the same statutory requirements as are applicable to suits for the recovery of such amounts maintained against the United States in the United States district court with respect to the United States income tax. When any judgment against the government of Guam under this paragraph has become final, the Governor shall order the payment of such judgments out of any unencumbered funds in the treasury of Guam.

(3) Execution shall not issue against the Governor or any officer or employee of the government of Guam on a final judgment in any proceeding against him for any acts or for the recovery of money exacted by or paid to him and subsequently paid into the treasury of Guam, in performing his official duties under the income-tax laws in force in Guam pursuant to subsection

(a) of this section, if the court certifies that --

(A) probable cause existed; or

(B) such officer or employee acted under the directions of the Governor or his delegate.

When such certificate has been issued, the Governor shall order the payment of such judgment out of any unencumbered funds in the treasury of Guam.

(4) A civil action for the collection of the Guam Territorial income tax, together with fines, penalties, and forfeitures or for the recovery of any erroneous refund of such tax, may be brought in the name of and by the government of Guam in the District Court of Guam or in any district court of the United States or in any court having the jurisdiction of a district court of the United States.

(5) The jurisdiction conferred upon the District Court of Guam by this subsection

shall not be subject to transfer to any other court by the legislature, notwithstanding section 22(a) of this Act [48 USCS § 1424(a)].

Aug. 1, 1950, ch 512, §31, 64 Stat. 392; Aug. 20, 1958, P.L. 85-688, § 1, 72 Stat. 681; Oct. 31, 1972, P.L. 92-606, § 1(d), 86 Stat. 1497; Oct. 15, 1977, P.L. 95-134, Title II, § 203(c), 91 Stat. 1162.)

## APPENDIX E

**48 U.S.C.S. § 1421k. Designation of naval or military reservations; closed port**

Nothing contained herein shall be construed as limiting the authority of the President to designate parts of Guam as naval or military reservations, nor to restrict his authority to treat Guam as a closed port with respect to the vessels and aircraft of foreign nations.

(Aug. 1, 1950, ch 512, § 33, 64, Stat. 393.)

## APPENDIX F

**48 U.S.C.S. § 1421o. Federal assistance for fire control, watershed protection, and reforestation**

The Secretary of Agriculture is authorized to provide financial and technical assistance to Guam for improving fire control, watershed protection and reforestation, consistent with existing laws, administered by the Secretary of Agriculture, which are applicable to the continental United States. The program authorized by this section shall be developed in cooperation with the territorial government of Guam and shall be covered by a memorandum of understanding agreed to by the territorial government and the Department. The Secretary may also utilize the agencies, facilities, and employees of the Department, and may cooperate with other

public agencies and with private organizations and individuals in Guam and elsewhere.

(Sept. 19, 1974, P L 93-42. §1, 88 Stat. 1154)

## APPENDIX G

**48 U.S.C.S. § 1421p. Authorization of appropriations**

There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act [48 USCS §§ 1421o, 1421p]. Sums appropriated in pursuance of this Act [48 USCS 1421o, 1421p] may be allocated to such agencies of the Department as are concerned with the administration of the program in Guam (Sept. 19, 1974, P.L. 93-421, §2, 88 Stat. 1154.)

## APPENDIX H

### THE EXECUTIVE BRANCH

**48 U.S.C.S. § 1422. Governor and Lieutenant Governor; term of office; qualifications; powers and duties; annual report to Congress**

The executive power of Guam shall be vested in an executive officer whose official title shall be the "Governor of Guam". The Governor of Guam, together with the Lieutenant Governor, shall be elected by a majority of the votes case by the people who are qualified to vote for the members of the Legislature of Guam. The Governor and Lieutenant Governor shall be chosen jointly, by the casting by each voter of a single vote applicable to both offices. If no candidates receive a majority of the votes case in any election, on the fourteenth day thereafter a runoff election shall be held between

the candidates for Governor and Lieutenant Governor receiving the highest and second highest number of votes cast. The first election for Governor and Lieutenant Governor shall be held on November 3, 1970. Thereafter, beginning with the year 1974, the Governor and Lieutenant Governor shall be elected every four years at the general election. The Governor and Lieutenant Governor shall hold office for a term of four years and until their successors are elected and qualified.

No person who has been elected Governor and Lieutenant Governor shall commence on the first Monday of January following the date of election.

No person shall be eligible for election to the office of Governor or Lieutenant Governor unless he is an eligible voter and has been for five consecutive years immediately preceding the election a citizen of the United States and a bona

fide resident of Guam and will be, at the time of taking office, at least thirty years of age. The Governor shall maintain his official residence in Guam during his incumbency.

The Governor shall have general supervision and control of all the departments, bureaus, agencies, and other instrumentalities of the executive branch of the government of Guam. He may grant pardons and reprieves and remit fines and forfeitures for offenses against local laws. He may veto any legislation as provided in this Act. He shall appoint, and may remove, all officers and employees of the executive branch of the government of Guam, except as otherwise provided in this or any other Act of Congress, or under the laws of Guam, and shall commission all officers that he may be authorized to appoint. He shall be responsible for the faithful execution of

the laws of Guam and the laws of the United States applicable in Guam. Whenever it becomes necessary, in case of disaster, invasion, insurrection, or rebellion, or imminent danger thereof, or to prevent or suppress lawless violence, he may summon the posse comitatus or call out the militia or request assistance of the senior military or naval commander of the Armed Forces of the United States in Guam, which may be given at the discretion of such commander if not disruptive of, or inconsistent with, his Federal responsibilities. He may, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, proclaim the island, insofar as it is under the jurisdiction of the government of Guam, to be under marital law. The members of the legislature shall meet forthwith on their own initiative and may,

by a two-thirds vote, revoke such proclamation.

**48 U.S.C.S. § 1422. Governor and Lieutenant Governor; term of office; qualifications; powers and duties; annual report to Congress**

[First five undesignated paras, unchanged] The Governor shall prepare, publish, and submit to the Congress and the Secretary of the Interior a comprehensive annual financial report in conformance with the standards of the National Council on Governmental Accounting within one hundred and twenty days after the close of the fiscal year. The comprehensive annual financial report shall include statistical data as set forth in the standards of the National Council on Governmental Accounting relating to the physical, economic, social, and political characteristics of the government, and any other information required by the

Congress. The Governor shall also make such other reports at such other times as may be required by the Congress or under applicable Federal law. He shall also submit to the Congress, the Secretary of the Interior, and the cognizant Federal auditors a written statement of actions taken or contemplated on Federal audit recommendations within sixty days after the issuance date of the audit report. He shall have the power to issue executive orders and regulations not in conflict with any applicable law. He may recommend bills to the legislature and give expression to his views on any matter before that body.

[Concluding undesignated para. unchanged]

(As amended Oct. 19, 1982, P. L. 97-357, Title I, § 104(a), 96 Stat. 1705.)

## APPENDIX I

**48 U.S.C.S. § 1422a TERRITORIES AND POSSESSIONS**

**§ 1422a. Initiative and referendum; removal**

(a) The people of Guam shall have the right of initiative and referendum, to be exercised under conditions and procedures specified in the laws of Guam.

(b) Any Governor, Lieutenant Governor, or member of the legislature of Guam may be removed from office by a referendum election in which at least two-thirds of the number of persons voting for such official in the last preceding general election at which such official was elected vote in favor of recall and in which those so voting constitute a majority of all those participating in such referendum election. The referendum election shall be initiated by the

legislature of Guam following (a) a two-thirds vote of the members of the legislature in favor of a referendum, or (b) petition for such a referendum to the legislature by registered voters equal in number to at least 50 per centum of the whole number of votes cast at the last general election at which such official was elected preceding the filing of the petition.

(As amended Oct. 19, 1982, P.L. 97-357, Title I, § 101, 96 Stat. 1705)

APPENDIX J

**48 U.S.C.S. § 1422d. Transfer of functions, powers, and duties from government comptroller to Inspector General; audit, report**

**(a) Transfer of functions to Inspector General.** The following functions, powers, and duties heretofore vested in the government comptroller for Guam are hereby transferred to the Inspector General, Department of the Interior, for the purpose of establishing an organization which will maintain a satisfactory level of independent audit oversight of the government of Guam:

(1) The authority to audit all accounts pertaining to the revenue and receipts of the government of Guam, and of funds derived from bond issues, and the authority to audit, in accordance with law and administrative regulations, all

expenditures of funds and property pertaining to the government of Guam including those pertaining to trust funds held by the government of Guam.

APPENDIX K

**48 U.S.C.S. § 1423a. Power of Legislature; limitation on indebtedness of Guam; bond issues; guarantees for purchase by Federal Financing Bank of Guam Power of Authority bonds or other obligations; interest rates; default**

The legislative power of Guam shall extend to all subjects of legislation of local application not inconsistent with the provisions of this Act and the laws of the United States applicable to Guam. Taxes and assessments on property, internal revenues, sales, license fees, and royalties for franchises, privileges, and concessions may be imposed for purposes of the government of Guam as may be uniformly provided by the Legislature of Guam, and when necessary to anticipate taxes and revenues, bonds and other obligations may be issued by the government of Guam:

Provided, however, That no public indebtedness of Guam shall be authorized or allowed in excess of 10 per centum of the aggregate tax valuation of the property in Guam. Bonds or other obligations of the government of Guam payable solely from revenues derived from any public improvement or undertaking shall not be considered public indebtedness of Guam within the meaning of this section. All bonds issued by the government of Guam or by its authority shall be exempt, as to principal and interest, from taxation by the Government of the United States or by the government of Guam, or by any State or Territory or any political subdivision thereof, or by the District of Columbia. The Secretary of the Interior (hereafter in this section referred to as "Secretary") is authorized to guarantee for purchase by the Federal Financing Bank bonds or other obligations

of the Guam Power Authority maturing on or before December 31, 1978, which shall be issued in order to refinance short-term notes due or existing on June 1, 1976 and other indebtedness not evidenced by bonds or notes in an aggregate amount of not more than $36 million, and such bank, in addition to its other powers, is authorized to purchase, receive or otherwise acquire these same. The interest rate on obligations purchased by the Federal Financing Bank shall not be less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities, adjusted to the nearest one-eighth of 1 per centum, plus 1 per centum per annum. The Secretary, with the concurrence of the Secretary of the Treasury, may extend the guarantee

provision of the previous sentence until December 31, 1980. The Secretary, upon determining that the Guam Power Authority is unable to refinance on reasonable terms the obligations purchased by the Federal Financing Bank under the fifth sentence of this section by December 31, 1980, may with the concurrence of the Secretary of the Treasury, guarantee for purchase by the Federal Financing Bank, and such bank is authorized to purchase, obligations of the Guam Power Authority issued to refinance the principal amount of the obligations guaranteed under the fifth sentence of this section. The obligations that refinance such principal amount shall mature not later than December 31, 1990, and shall bear interest at a rate determined in accordance with section 6 of the Federal Financing Bank Act (12 U.S.C. 2285) [12 USCS § 2285]. At the request of the Board of Directors of the Guam Power

Authority for a second refinancing agreement and conditioned on the approval of the Government of Guam pursuant to the law of Guam, and conditioned on the establishment of an independent rate-making authority by the Government of Guam, the Secretary may guarantee for purchase by the Federal Financing Bank, on or before December 31, 1984, according to an agreement that shall provide for-

(a) substantially equal semiannual installments of principal and interest.

(b) maturity of obligations no later than December 31, 2004.

(c) authority for the Secretary, should there be a violation of a provision of this legislation, or covenants or stipulations contained in the refinancing document and after giving sixty days notice of such violation to the Guam Power Authority and the Governor of Guam, to dismiss members of the Board of Directors

or the general manager of the Guam Power Authority, and (1) appoint in their place members or a general manager who shall serve at the pleasure of the Secretary, or (2) contract for the management of the Guam Power Authority, and (d) an annual simple interest rate of seven per centum, and the Federal Financing Bank shall purchase such Guam Power Authority obligations if such Guam Power Authority obligations are issued to refinance the principal amount scheduled to mature on December 31, 1990. Should such second refinancing occur, (1) the independent rate-making authority to be established by the Government of Guam, or in its absence, the Board of Directors of the Guam Power Authority, shall establish rates sufficient to satisfy all financial obligations and future capital investment needs of the Guam Power Authority that shall be consistent with generally

accepted rate-making practices of public utilities, and (2) the Government of Guam shall not modify the requirements of such refinancing agreement without agreement of the Secretary. There are authorized to be appropriated to the Secretary of the Interior for payment to the Federal Financing Bank such sums as are necessary to pay (1) the repurchase payment required under the fifth paragraph of the December 31, 1980, noted from the Guam Power Authority to the Federal Financing Bank and any subsequent repurchase payments required under the second refinancing agreement, and (2) the interest rate differential between the seven per centum to be paid by the Guam Power Authority and the second refinancing agreement and the interest rate that would otherwise be determined in accordance with the above cited section 6 of the Federal Financing Bank Act [12 USCS § 2285].

Should the Guam Power Authority fail to pay in full any installment of interest or principal when due on the bonds or other obligations guaranteed under this section, the Secretary of the Treasury, upon notice from the Secretary shall deduct and pay to the Federal Financing Bank or the Secretary, according to their respective interests, such unpaid amounts from sums collected and payable pursuant to section 30 of this Act (48 U.S.C. 1421h) [48 USCS § 1421h]. Notwithstanding any other provision of law, Acts making appropriations may provide for the withholding of any payments from the United States to the government of Guam which may be or may become due pursuant to any law and offset the amount of such withheld payments against any claim the United States may have against the government of Guam or the Guam Power Authority pursuant to this guarantee. For

the purpose of this Act, under section 3466 of the Revised Statutes (31 U.S.C. 191) [USCS § 191] the term "person" includes the government of Guam and the Guam Power Authority. The Secretary may place such stipulations as he deems appropriate on the bonds or other obligations he guarantees.

(As amended Oct. 5, 1984, P.L. 98-454, Title II, § 203, 98 Stat. 1733.)

## APPENDIX L

**48 U.S.C.S. § 1423i. Approval of bills**

Every bill passed by the legislature shall, before it becomes a law, be entered upon the journal and presented to the Governor. If he approves it, he shall sign it, but if not he shall, except as hereinafter provided, return it, with his objections, to the legislature within ten days (Sundays excepted) after it shall have been presented to him. If he does not return it within such period, it shall be a law in like manner as if he had signed it, unless the legislature by adjournment prevents its return, in which case it shall be a law if signed by the Governor within thirty days after it shall have been presented to him; otherwise it shall not be a law. When a bill is returned by the Governor to the legislature with his objections, the

legislature shall enter his objections at large on its journal and, upon motion of a member of the legislature, proceed to reconsider the bill. If, after such reconsideration, two-thirds of all the members of the legislature pass the bill, it shall be a law. If any bill presented to the Governor contains several items of appropriation of money, he may object to one or more of such items, or any part or parts, portion or portions thereof, while approving the other items, parts, or portions of the bill. In such a case he shall append to the bill, at the time of signing it, a statement of the items, or parts or portions thereof, to which he objects, and the items, or parts or portions thereof, so objected to shall not take effect. All laws enacted by the legislature shall be reported by the Governor to the head of the department or agency designated by the President under

section 3 of this Act [48 USCS § 1421a]. The Congress of the United States reserves the power and authority to annul the same. (Aug. 1, 1950, ch 512, § 19, 64 Stat. 389; Sept. 11, 1968, P.L. 90-497, § 8, 82 Stat. 847; Jan. 2, 1975, P.L. 93-608, § 1(14), 88 Stat. 1969.)

## APPENDIX M

**42 U.S.C.S. § 1301. Definitions**

(a) When used in this Act-

(1) The term "State", except where otherwise provided, includes the District of Columbia and the Commonwealth of Puerto Rico, and when used in titles IV, V, VII, XI, and XIX [42 USCS §§ 601 et. seq., 701 et seq., 901 et seq., 1301 et seq.] includes the Virgin Islands and Guam. Such terms when used in titles III, IX, and XII [42 USCS §§ 501 et seq., 1101 et seq., 1321 et seq.] also includes the Virgin Islands. Such term when used in title V [42 USCS §§ 701 et seq.] and in part B of this title [42 USCS §§ 1320c et seq.] also includes American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. Such term when used in title XIX [42 USCS §§

1396 et seq.] also includes the Norther Mariana Islands and American Samoa. In the case of Puerto Rico, the Virgin Islands, and Guam, titles I, X, and XIV, and title XVI [42 USCS §§ 301 et seq., 1201 et seq., 1351 et seq., 1381 et seq.] (as in effect without regard to the amendment made by section 301 of the Social Security Amendments of 1972 [42 USCS §§ 1381 et seq.]) shall continue to apply, and the term "State" when used in such titles (but not in title XVI [42 USCS §§ 1381 et seq.] as in effect pursuant to such amendment after December 31, 1973) includes Puerto Rico, the Virgin Islands, and Guam.. Such term when used in title XX [42 USCS §§ 1381 et seq.] also includes the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. Such term when used in title IV [42 USCS §§ 60] et se.] also includes American Samoa

(2)-(7) [Unchanged]

(8)(A) [Unchanged

(B) The Federal percentage for each State (other than Puerto Rico, the Virgin Islands and Guam) shall be promulgated by the Secretary between October 1 and November 30 of each year, on the basis of the average per capita income of each State and of the United States for the three most recent calendar years for which satisfactory data are available from the Department of Commerce. Such promulgation shall be conclusive for each of the four quarters in the period beginning October 1 next succeeding such promulgation: Provided, That the Secretary shall promulgate such percentages as soon as possible after the enactment of the Social Security Amendments of 1958 [enacted Aug. 28, 1958], which promulgation shall be conclusive for each of the eleven

quarters in the period beginning October 1, 1958, and ending with the close of June 30, 1961

(C), (D) [Unchanged]

(9) [Unchanged]

(b)-(d) [Unchanged]

(As amended Apr. 7, 1986, P.L. 99-272, Title IX, Subtitle B. § 9528(a). 100 Stat. 219. Oct. 22, 1986, P.L. 99-514, Title XVIII, Subtitle C, Ch 1, §§ 1883(c)(1), 1895(c)(6), 100 Stat. 2918, 2936; Dec. 22 ,1987, P.L. 100-203, Title IX, Subtitle B, Part 2, § 9135(a)(1), (b)(1), 101 Stat. 1330-315; Oct. 13, 1988, P.L. 100-485, Title VI, § 601(a), 102 Stat. 2407)

## APPENDIX N

**42 U.S.C.S. § 8802 PUBLIC HEALTH AND WELFARE**

(ii) the acquisition of land and improvements thereon for the construction, expansion, or improvement of such a project, or the conversion of a facility to such a project.

(C) Such term does not include the acquisition of any facility which was operated as a biomass energy project before the acquisition.

(10) The term "Federal agency" means any of

the following forms of financial assistance provided under this title, or any combination of such forms:

(i) loans,

(ii) loan guarantees,

(iii) price guarantees, and

(iv) purchase agreements.

(B) Such term includes any commitment to provide such assistance.

(12) The term "Indian tribe" means any Indian tribe, band, nation or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 USCS §§ 1601 et seq.] which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(13) The term "motor fuel" means gasoline, kerosene, and middle distillates (including diesel fuel).

(14)(A) The term "municipal waste" means organic matter, including sewage, sewage sludge, and industrial or commercial waste, and mixtures of such matter and inorganic refuse-

(i) from any publicly or privately operated municipal waste collection or similar disposal system, or

(ii) from similar waste flows (other than such flows which constitute agricultural wastes or residues, or wood wastes or residues from wood harvesting activities or production of forest products).

(B) Such term does not include any hazardous waste, as determined by the Secretary of Energy for purposes of this title.

(15)(A) The term "municipal waste energy project" means any facility (or portion of a facility) located in the United States primarily for-

(i) the production of biomass fuel (and byproducts) from municipal waste; or

(ii) the combustion of municipal waste for the purpose of generating steam or

forms of useful energy, including industrial process heat, mechanical power, or electricity (including cogeneration).

(B) Such term includes any necessary transportation, preparation, and disposal equipment and machinery for use in or at the site of the facility involved.

## APPENDIX O

**Rule 26-1. Filing Deadlines for the District of Guam and the Northern Mariana Islands**

Except as provided by order of the court, or by FRAP 26(b) and 31, all deadlines for filing set forth in FRAP or these rules are extended by 7 days in cases arising from the Districts of Guam and the Northern Mariana Islands.

**APPENDIX P**

CERTIFICATE OF FILING AND MAILING

I, **CASSANDRA Y. BOSLEY**, do hereby declare and certify as follows:

I am over the age of eighteen (18) years and am a resident of the Territory of Guam. All the facts stated herein are personally known to me and I have firsthand knowledge of the same. As to those facts stated upon information and belief, I believe them to be true and correct. If called upon as a witness, I could and would competently testify thereto under oath.

On the 20th day of August, 1991, three (3) copies and an original of Plaintiff/Appellant's Request for Rehearing were sent vial DHL Courier Service to the Clerk, United States Court of Appeals for the Ninth Circuit, U.S.

Court of Appeals and Post Office Building, 7th & Mission Streets, Post Office Box 547, San Francisco, California 94101.

I further certify that a copy of Plaintiff/Appellant's Request for Rehearing will be served on August 20, 1991, to Kenneth D. Orcutt, Assistant Attorney General, Office of the Attorney General, Government of Guam, The Judicial Center, Agana, Guam 96910, as attorneys for Defendants/Appellees herein.

I further declare that said filing and service was made at the direction of an attorney duly licensed to practice in this Court.

Executed this 20th day of August, 1991, at Agana, Guam.

(Sgd.) **CASSANDRA Y. BOSLEY**

**APPENDIX Q**

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

| | |
|---|---|
| MILDRED LOUISE BLAS, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JOHN MARVIN BLAS, ON HER OWN BEHALF, AND AS GUARDIAN FOR THE MINOR, MARVIN JOHN BORJA, | CASE NO. 90-16048<br>D.C. CASE NO. CV89-00052-DHM<br>S.C. CASE NO. CV1103-86 |
| Plaintiffs-Appellants, | |
| v. | **AFFIDAVIT OF WILFRED C.AFLAGUE IN SUPPORT OF MOTION TO DISMISS** |
| GOVERNMENT OF GUAM, JOSE T. CHARFAUROS, INDIVIDUALLY AND AS DIRECTOR OF THE DEPARTMENT OF CORRECTIONS) FREDERICK B. QUINENE, INDIVIDUALLY AND AS DEPUTY DIRECTOR OF THE DEPARTMENT OF CORRECTIONS) VICENTE CASTRO, INDIVIDUALLY AND AS SUPERINTENDENT OF THE DEPARTMENT OF CORRECTIONS) GOVERNMENT OF GUAM, | |
| Defendants-Appellees. | |

I, **WILFRED G. AFLAGUE**, being first duly sworn, do hereby depose and say:

1. That I am the Director of the Department of Administration for the Government of Guam.

2. As such, I am responsible by law for accounting for all money received and expended by the Government of Guam.

3. Attached hereto is a true and correct copy of a portion of the combined financial statements of the Government of Guam as of September 30, 1989 and for the year then ended. This document was produced by the Department of Administration in its usual course of business.

4. This statement indicates that out of $372,405,747 in revenues received by the government of Guam in fiscal year 1989, only $47,676,051 or approximately 12.8% was received from the federal government.

Dated this 10th day of January, 1991.

(Sgd.) **WILFRED G. AFLAGUE**

SUBSCRIBED AND SWORN TO before me this 10th day of January, 1991.

_____

(Sgd.) **NOTARY PUBLIC**